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HUMAN RIGHTS COMMITTEE

Forty-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1160th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 21 July 1992, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR URBINA

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1160/Add.1.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Peru (CCPR/C/51/Add.4, 5 and 6) (continued)

1. The CHAIRMAN invited members of the Committee to resume consideration of the second periodic report of Peru (CCPR/C/51/Add.4, 5 and 6) and gave the floor to the Peruvian delegation on a point of information.

2. Ms. LINARES ARENAZA (Peru), replying to a question by Mr. Wennergren concerning a judge, Mr. Escobar Piñeda, who had allegedly been assassinated, said that Mr. Escobar Piñeda had left the country for the United States, supposedly upon receiving death threats. According to the latest information supplied by the Ministry of Defence and the Government Attorney's Office, it had not been established that Mr. Carlos Escobar Piñeda had in fact received any threat upon his life. He had first travelled to the United States on vacation. At the time when he should have resumed his duties as Prosecutor in Lima he had sent a medical certificate and requested sick leave in order to undergo a course of treatment in the United States. The Government Attorney's Office had thereupon asked him to return in order to resume his duties consisting, in particular, of investigating cases of persons who had disappeared in Lima. Mr. Escobar Piñeda had then, from the United States, sent a letter of resignation, which had not been accepted by the Government Attorney's Office. In conclusion, she said that Mr. Escobar Piñeda's allegations had never been proved.

3. The CHAIRMAN invited Committee members to make known their comments and conclusions following the consideration of the second periodic report of Peru (CCPR/C/51/Add.4, 5 and 6).

4. Mr. PRADO VALLEJO thanked the two Peruvian delegations which had been present in New York and Geneva, respectively, for the frankness of their replies and their goodwill at all stages of the consideration of the second periodic report (CCPR/C/51/Add.4, 5 and 6). Their position was difficult, since they probably did not have access to all the information that might have enabled them to give satisfactory answers to every question concerning human rights violations in Peru; at the current session, at all events, the Peruvian delegation had nevertheless coped very well with its task, doing everything it could to fill in the gaps of the second periodic report and the additional information. The fact remained, however, that the documents submitted in writing failed to give an accurate picture of the sad and painful reality with regard to human rights in Peru. They said nothing about steps taken by the Government to ensure respect of the rights set forth in the Covenant or about the difficulties encountered in that connection. Furthermore, the Constitution did not appear to be properly in force and there was still considerable uncertainty as to the legal status of the country's institutions.

5. So far as matters of substance were concerned, they had not, generally speaking, been sufficiently clarified; a number of points still gave rise to concern, particularly the situation resulting from the failure to punish offences committed by members of the security forces. There had been

practically no investigation into offences committed by the military, particularly in the areas under a state of emergency, where the armed forces enjoyed absolute power and where the most flagrant violations of human rights were taking place. In those regions, which represented almost half of the national territory, civilians were detained and tried by the military, and central authority was clearly not being exercised.

6. Several sources made mention of a directive given to members of the armed forces by the Ministry of Defence with the object of encouraging the execution of individuals who had committed subversive acts. The authorities had said that the document in question was not official, but there was no avoiding the conclusion that the security forces were acting in precisely such a spirit. Shining Path and other subversive groups, such as Tupac Amaru, were certainly committing crimes that were tantamount to genocide and other abhorrent offences that called for the strictest possible application of the law, but that fact could not give authority to the army or police, in their turn, to commit crimes and engage in violence. As Mr. Sadi had so well put it, terrorism could not justify the exercise of State terrorism. Furthermore, contrary to what was implied in paragraph 9 of document CCPR/C/51/Add.6, national and international organizations for the protection of human rights were not only interested in human rights violations against individuals belonging to terrorist organizations; they took into consideration both forms of violence - that practised by opponents of the regime and that of the law enforcement authorities. He recalled that 169 summary executions had been confirmed under the presidency of Mr. Fujimori. No inquiry into those cases had been held, and the culprits had not been punished. Clearly, the present Government, just like the previous one, had no control over the police and the army. President Fujimori was a civilian who without any doubt wanted the best for his country and wished to ensure respect of human rights. But the reality was very different, and serious violations of human rights remained a daily occurrence in Peru. In that connection, the Working Group on Enforced or Involuntary Disappearances had, in a recent report, referred to the tragedy taking place in the emergency zones placed under the control of the military authorities. The Working Group had put forward a series of recommendations, which the Government had not followed. Human rights organizations were beginning to receive complaints concerning the alleged near-extermination of groups of peasants in clashes with the rural militias. The militias, which enjoyed the support - including logistic support - of the armed forces, were composed of peasants: in other words, peasants were fighting other peasants, and that was one of the mechanisms whereby violence in Peru was perpetuated.

7. So far as the question of registers of detainees was concerned, it was evident that in the majority of cases the armed forces refused to give information about individuals whom they had arrested or placed under detention. People often had to wait six to eight months before obtaining information about a family member, and not even presidential decisions in that field were respected. Moreover, assistance granted by the United States of America for the purpose of maintaining such registers had been suspended after 5 April.

8. In conclusion, he reiterated his concern over a situation of generalized and intolerable violence characterized by serious violations of the rights and freedoms set forth in the Covenant. The collapse of the democratic system in

Peru on 5 April 1992 was of dramatic import for the other countries of Latin America as well, since it was liable to create a dangerous precedent on the continent.

9. Mr. WENNERGREN welcomed the interesting and far-ranging dialogue that had taken place, both in New York and at Geneva, with the Peruvian delegation, which he thanked for its cooperation. He was also most grateful for the information given on the case involving Judge Escobar Piñeda. However, so many facts remained unclear and so many questions remained unanswered that the dialogue could not, despite the extensive information kindly supplied by the Peruvian delegation, be described as genuinely fruitful. The rights set forth in the Covenant were obviously not guaranteed in the manner and to the extent they should be, and it was important to know why that was so. The terrorism practised by Shining Path and the Tupac Amaru Revolutionary Movement was doubtless largely responsible for that situation, but it did not explain it entirely.

10. He was disturbed by the fact that there was no legal provision, whether in the Constitution or in other legislative texts, to authorize the measures taken on 5 April 1992, in particular the dissolution of Parliament and the detention of some 50 influential persons. The dissolution of Parliament had apparently been dictated exclusively by the principle of necessity which, as everyone knew, ignored the law. The principle of necessity was, of course, recognized in most legal systems, but only within the narrow meaning of the term. In the case of Peru, it was difficult to conclude that the principle justified the decision taken on 5 April. As for the measures involving the arrest of various important persons, they were manifestly without any legal foundation, and only vague interests of the State had been invoked to justify them. Even before 5 April the Peruvian authorities had not been able to implement the provisions of the Covenant in a large number of areas. Very few investigations had been conducted in cases of extrajudicial executions, disappearances, ill-treatment and torture. In general, it appeared that Peru was not yet capable of discharging its obligations under the Covenant. While such a situation could be understood in view of the present wave of terrorism in the country, it was nevertheless highly regrettable. Since 5 April 1992 - a date which marked the beginning of a kind of interlude - the situation had changed. The principle of necessity which the authorities seemed to invoke did not mean that the State should put itself outside the law. The measures taken on 5 April had given rise to new uncertainties as to the protection of rights and respect for obligations contracted by virtue of the Covenant. The interlude which had begun in spring 1992 should be as short as possible so that the country's trust in legal values might remain unshaken. It was to be hoped that, once that episode was closed, the State would act forcefully to ensure respect for the law and promote human rights.

11. Miss CHANET thanked the Peruvian delegations to the sessions in New York and Geneva for the goodwill they had shown in spite of their clearly difficult position. Unfortunately, too many questions remained unanswered, but the debate had still provided the Committee with some useful information. The fact was that, for the past 10 years and more, the climate in Peru had been one of unprecedented violence. Although estimates varied, the number of disappeared persons was certainly very high; furthermore, a fairly large number of extrajudicial executions and cases of torture were regularly reported.

Shining Path and the Tupac Amaru Revolutionary Movement, as well as the forces of law and order and various paramilitary groups, were responsible for that violence. In 1991, the media had disclosed a secret army document recommending that troops should carry out summary executions without leaving any trace, and take no prisoners. The Ministry of Defence had acknowledged the existence of the document, but stressed that it had not been endorsed by the Commander-in-Chief. She, however, was gravely concerned by the fact that such instructions had been given to the military, since they would very probably have been carried out. She deplored the fact that the Committee had not been given any information on the matter.

12. Generally speaking, the Peruvian authorities had chosen to respond by force to the different forms of violence described. The state of emergency had been declared more than 80 times since 1983. The Peruvian delegation had acknowledged that some parts of the Constitution had been suspended, but she still did not know which provisions remained in force. What was clear was that the Constitution had not been suspended in accordance with a procedure laid down in that text or submitted to referendum. Furthermore, the actual legal basis for the implementation in Peru of the rights set forth in the Covenant was also open to question. The Peruvian delegation had stated that the legal basis was Decree-Law No. 25418; however, since that Decree-Law had been adopted outside the framework of the Constitution, by virtue of article 82 of the latter, it might be considered null and void. Certain welcome developments such as the setting up of a register of disappearances rested on a questionable legal basis. For instance, Decree-Law No. 25592 was said to have been passed by congressional delegation in June 1992, by which time Congress had already been dissolved. The situation was even more worrying since throughout their consideration of the second periodic report (CCPR/C/51/Add.4, 5 and 6), the members of the Committee had noted grave violations of various articles of the Covenant, in particular articles 6 and 7. The film shown by the Peruvian delegation had served to illustrate not only the violence rampant in Peru but also the authorities' inability to curb it. Likewise, the official recognition of rural militias fostered a climate of tension and spiralling violence and posed a grave threat to the implementation of article 6 of the Covenant. As for the rights which could not be limited by virtue of article 4 of the Covenant, for instance those set forth in articles 9 and 14, the Committee should be informed as to the precise terms of derogations from those articles. It seemed that the remedy of habeas corpus legally existed, and had never been suspended; none the less, in view of the problems encountered by those wishing to avail themselves of that right, it had apparently been totally ineffective since 5 April. With respect to article 14 of the Covenant, and in particular the independence of the judiciary, she considered that measures such as suspending the activity of the courts and surrounding the law courts were unlikely to guarantee the independence provided for in that article. Nor was she certain that the decision of the emergency Government to replace judges outside the constitutional framework augured well for the impartiality and independence of the new courts that had been established.

13. She understood that elections were scheduled for November 1992 and that the authorities considered the current situation as temporary. She therefore associated herself with the other members of the Committee who had expressed their desire for a prompt return to democracy ensuring the observance of the rights set forth in the Covenant.

14. Mr. ANDO thanked the Peruvian Government for answering the questions raised by Committee members in its supplementary report, as well as the Peruvian delegation for its oral replies. He nevertheless shared the concerns expressed by several members of the Committee. For instance, he was still uncertain about the position of the Constitution, which had not been clearly explained, as well as the reasons for so much abuse of power among the police and armed forces. He was also concerned by the fact that the independence of the judiciary was not guaranteed. Furthermore, he considered that in order to combat the brutal acts of terrorist groups the Government should refrain from itself engaging in repressive and seemingly illegal measures. Of course, the building of a true democracy and the new economic and social structures which were essential for the observance of human rights required both courage and patience; it was to be hoped that the Peruvian authorities would swiftly and resolutely embark on that course, particularly for the drafting of the new Constitution. He hoped that the Peruvian Government would have the satisfaction of describing the results of efforts made to ensure greater protection and promotion of human rights in its third periodic report.

15. Mr. EL SHAFEI said he had followed with great interest the dialogue with the Peruvian delegation, which had done its best to describe the situation in Peru with regard to respect for the rights and freedoms enshrined in the Covenant. However, a number of issues still caused him concern. The widespread violence and brutal use of force by terrorist groups certainly placed the Government in an extremely awkward situation, since it had to combat the terrorist acts while ensuring observance of the law and the application of both the Constitution, internal legislation and international instruments. Nevertheless, he doubted whether many Governments when faced with a similar situation would have reacted as the Peruvian Government had done in April 1992 by declaring a state of emergency, dissolving parliament and handing over full powers to the executive. He was also surprised at the extraordinary additional measures taken by the Peruvian Government in deciding to close all civil courts and the Government Attorney's Office, to dismiss all members of the Court of Constitutional Guarantees, 13 Supreme Court judges and all the members of the National Council of the Magistracy as well as the Attorney-General, the Special Prosecutor for the Defence of Human Rights and more than 120 other judges and public prosecutors. Likewise, one of the rights which had apparently been suspended in practice was the remedy of habeas corpus. In view of the situation, the Committee could justifably expect an explanation from the Peruvian delegation on the reasons for the adoption of such extraordinary measures, which had done serious harm to the structures and procedures on which States relied for the protection of human rights. It was regrettable that the Peruvian delegation had not explained the reasons for suppressing the main guarantees for the independence of the judiciary.

16. Nor had the Peruvian delegation indicated whether the measures introduced since April 1992 had actually helped to reduce the number of disappearances, extrajudicial executions and assassinations. In other words, it had not provided a single piece of information to indicate that the "reforms" applied in April 1992 had contributed positively to normalizing the situation in the country. Although the current situation might be held to be the result of many years of insurgency and counter-insurgency during which the parties

involved in the conflict had continually resorted to force, certain international instruments such as the Additional Protocols to the Geneva Conventions should continue to be applied.

17. The Committee would also have liked further information on the actual difficulties encountered by the Peruvian Government in its efforts to ensure the observance of the rights and freedoms enshrined in the Covenant. He hoped that the Peruvian delegation would inform its Government of the remarks made and concerns expressed by members of the Committee during an exchange of views conducted in good faith, the sole aim of which was to make the greatest possible contribution to improving the human rights situation in Peru.

18. Mr. Aguilar Urbina took the Chair.

19. Mr. MULLERSON thanked the Peruvian delegation for its efforts to answer the numerous questions raised by the Committee; it had given members a clearer picture of the situation in the country and a better understanding of the position of the Peruvian Government. Admittedly it was difficult to combat terrorist groups, drug traffickers and those responsible for summary executions, disappearances and torture simultaneously. None the less, he reiterated that the atrocities committed by the Government's opponents by no means justified State terrorism, which merely opened the way for the indoctrination of future generations of terrorists.

20. The Peruvian delegation had not specified which provisions of the Constitution President Fujimori had invoked in order to dissolve Parliament and suspend the activities of the entire judicial system. He further noted that while the Government had taken certain severe and repressive measures against terrorist groups and drug traffickers, it seemed that other parties were acting with a degree of impunity and yet the Government was unwilling or unable to penalize the abuses committed by its security forces.

21. He hoped that the Peruvian delegation would inform its Government of the concerns expressed by the members of the Committee on those various points.

22. Mr. Pocar resumed the Chair.

23. Mrs. HIGGINS thanked the Peruvian Government for acting on the Committee's request by submitting a report which supplemented the second periodic report. She also appreciated the thoughtful oral replies by the Peruvian delegation.

24. The Peruvian Government no doubt had good reason to wish to eliminate the terrorism which was rife in the country before committing itself fully to restoring respect for human rights. She welcomed the steps taken by President Fujimori to punish those responsible for violations, both in terrorist circles and within the government forces.

25. She regretted however that the supplementary report submitted by the Peruvian Government contained very little information on the application of articles 6, 7 and 9 of the Covenant, and that the Government had not answered in full the questions raised by the Committee at its previous session. It was

highly regrettable that the Government had still not responded to the Special Rapporteur's requests for information on communications Nos. 203/1986 and 209/1986 concerning cases involving Peru, which caused her to doubt Peru's intentions with regard to the promotion of human rights when it had voluntarily recognized the competence of the Committee to consider communcations addressed to it. Nor had the Peruvian delegation clearly stated whether the Government was still derogating from the rights set forth in articles 9, 12, 17 and 21 of the Covenant and whether the dissolution of certain judicial bodies had been effected in accordance with the provisions of article 14. Even before the changes that had taken place in April 1992, she had been concerned by the fact that members of the military forces were still subject to the rules of military justice when offences they had committed obviously came under ordinary law, as well as by the evidently inadequate punishment for those among them who had been found guilty of serious offences. Another matter which still concerned her was the considerable number of persons placed in pre-trial detention in prison institutions, often in inhuman conditions. It seemed that since 5 April 1992 the independence of the judiciary had been seriously compromised and politicians had been arbitrarily imprisoned. She therefore requested the Peruvian Government to take due account of the members' remarks.

26. Mr. HERNDL said that the dialogue between a State party and the Committee could only be constructive if the Government concerned accepted the arguments and comments of Committee members for what they were, rather than regarding them as mere objections. He therefore hoped that the Peruvian Government would make some changes to its legislation, as well as its method of handling certain human rights problems, bearing in mind what had been said in the Committee. Of course, the members of the Committee fully understood the position of the Peruvian Government when it argued that the presence of violent terrorist groups clearly affected the overall observance of human rights in the country, but terrorism could not be fought by State terrorism. He thus hoped that when the Peruvian Government adopted anti-terrorist measures, it would take into consideration the inherent rights of the human person, as laid down in the Covenant.

27. The Committee was particularly concerned about the rights set forth in articles 6 and 7 of the Covenant, namely the right to life and the right to protection against torture, as well as those set forth in article 14. The entire judicial system had ground to a halt in Peru, when the proper administration of justice was essential for the exercise of human rights. At the Committee's request the Peruvian Government had provided information as well as a supplementary report, but the information contained in those documents remained very scant. The Committee had learned that parts of the Constitution as well as democratic institutions had been suspended, but it had not been provided with details on the legal framework for such measures.

28. It was to be hoped that democracy would be restored in Peru as soon as possible. Some initial steps had been taken in that direction and elections had been scheduled for November. Above all he hoped for a return to the multi-party system in Peru and also, in view of the alarming situation with regard to the rights proclaimed in article 6 of the Covenant, for closer supervision of the security forces by the authorities, for a reduction in the excessive powers given to military tribunals and, last but not least, for the situation, as far as possible, to return to normal.

29. He was sure that the Government was determined to bring the situation in the country into line with the provisions of the Covenant as soon as possible. In that connection he looked forward to the establishment of a Human Rights Commission in Peru, which could help the Government to monitor developments in that area. But it was absolutely essential to put an end to current aberrations, and in particular to supervise the militias or peasant patrols (rondas campesinas) which were also responsible for a great many extrajudicial executions, massacres and even torture.

30. Mr. SADI said his conclusion was that implementation of the Covenant in Peru had been suspended. The measures had no doubt been taken for serious reasons connected with terrorism and violence, but it was to be hoped that the country would soon return to legality and respect for the provisions of the Covenant. In particular, the authorities should redouble their efforts to trace persons who had disappeared and to stop extrajudicial executions. Lastly, he hoped that victims of human rights violations would receive compensation, an aspect of human rights that was often neglected.

31. Mr. AGUILAR URBINA noted with regret that some of his questions had received only a partial reply and many had remained unanswered. For example, he still did not know by virtue of what constitutional rules the non-executive powers of the State had been modified without checks of any kind. The question as to which provisions of the Covenant had been suspended had received the laconic reply that those provisions that could not be derogated from had not been suspended. The situation with regard to the rights set forth in article 14 of the Covenant was also unknown, but it would seem that they, too, had been suspended, like those provided for in article 25.

32. That being so, he was inclined to share Mr. Sadi's view that the provisions of the Covenant as a whole were not being implemented as a result of the total suspension of the Constitution. Peru was currently governed by the provisions of Decree-Law No. 25418, drafted in extremely vague terms, and the application of the Constitution, the country's laws and the Covenant was suspended. In reply to questions asked by Mrs. Higgins concerning the remedy of habeas corpus, the Peruvian delegation had said, on the one hand, that the right had never been suspended and, on the other hand, that the right to claim habeas corpus had been refused to certain individuals. What was the difference between preventing someone from exercising the right of habeas corpus and suspending that right? There was no longer any certainty as to the legal rules in force and the guarantees of their implementation. In fact, constitutional rules were derogated from in ways which the Peruvian delegation had failed to explain. Peru was therefore no longer a State under the rule of law.

33. Subjects of particular concern to Committee members in the case of Peru naturally included the actions of the military, the phenomenon of disappearances, and summary and extrajudicial executions. As a Central American, he wished to recall that the countries of his region were in the process of emerging from a period of darkness characterized by the same phenomena. They were emerging from it because they had understood that the only way to combat subversion was by choosing the the course of peace and, above all, by promoting a genuinely human form of development. The phenomenon of peasant militias also existed in Central America, with civil

defence patrols in Guatemala where similar atrocities were being committed. That was due to the fact that private individuals were allowed to play a role which properly belonged to the State, and that those individuals had no more awareness of the rights of others than of their own rights. Yet, as Benito Juarez had said, peace was respect of the rights of others. For so long as the peasant militias failed to respect the rights of others, they would help to create a climate propitious to the activities of terrorist groups such as Shining Path or the Tupac Amaru Revolutionary Movement.

34. Violence could not be fought by violence but only by peaceful means and with legal tools - those of democracy, not those of the army. The purpose of the dialogue between the Committee and the State party was to seek ways of facilitating the genuine exercise of human rights. There were countries in Central America that knew what violence was, had learnt that responding to violence with violence was a method doomed to failure, and were willing to let Peru share the benefit of their experience.

35. For his own part, he was particularly concerned about the consequences of the coup d'état which had been reflected in a number of serious derogations from the provisions of the Covenant. Thus, the judiciary - which, when independent, was what made possible the implementation of the Covenant - had been dismantled: 30 prosecutors had been dismissed, the Attorney-General of the Nation had resigned in protest and 137 magistrates and judges had been suspended, while 16 Supreme Court judges had been dismissed and 3 had resigned. Moreover, laws were being promulgated retroactively, which clearly showed that Peru was no longer a State under the rule of law. That was the case with Decree-Law No. 25454 which suspended the application of the conditions required for being a judge under a previous organic law, and which had been adopted for the sole purpose of retroactively regularizing the nominations made by President Fujimori to replace the judges who had been dismissed. As for those judges, they were not allowed to challenge their dismissal by bringing actions of amparo. The decree in question represented a violation of both the spirit and the letter of the Covenant.

36. Recalling that, like Mrs. Higgins, he had asked for a number of questions concerning communications Nos. 203/1986 and 209/1986, he noted that no reply had come to hand on that subject. He associated himself entirely with the comments made by Mrs. Higgins on that point.

37. In conclusion, he said that the existing situation in Peru was a matter of great concern to him since he also came from a Latin American country and therefore sympathized with the Peruvians in their current trials. It was true that the acts of savagery committed by the terrorists were sometimes tantamount to genocide. Setting off a bomb in a market-place was not an act of intimidation but collective murder. Those responsible for such acts must therefore be punished, and with severity, but in punishing them the authorities had to respect the guarantees provided by law and comply with the standards of international law which Peru had undertaken to respect, in particular by signing the Covenant. The Peruvian delegation could rest assured of the solidarity of the Latin American countries, which totally repudiated terrorist groups and were ready to share with Peru the lessons of their experience in the matter.

38. Mr. DIMITRIJEVIC said he hoped the Peruvian delegation had understood that the many questions asked by members of the Committee had been motivated by genuine concern over the extremely difficult situation in Peru. The delegation could not be expected to make up for all the shortcomings of the report. For his part, he had hoped that the Peruvian Government would seize the opportunity to describe the difficulties affecting the implementation of the Covenant, as provided in its article 40, paragraph 2. Yet on reading the supplementary report of Peru, the Committee had found an executive branch which complained of the "superficiality" of Peruvian democracy and tried to find excuses in the chaos, corruption and indifference which it ascribed to the legislature, the judiciary, the National Council of the Magistracy, the Court of Constitutional Guarantees and the Departments of the Government Attorney and the Comptroller-General of the Republic (CCPR/C/51/Add.6, para. 2). Thus it would seem that all the country's institutions, with the exception of the President, were responsible for the present situation. That being so, the Committee could hardly engage in a debate in which it would be obliged to adopt a stand on the Government's accusations.

39. That was not, however, the most curious aspect of the situation. The Peruvian delegation complained of the crimes of the main terrorist organizations, and had sought to illustrate those crimes by the videocassette shown to Committee members on the previous day. The paradoxical thing about the Peruvian report was that side by side with the attacks on the Shining Path and Tupac Amaru movements it gave a totally negative picture of the situation in the country, where nothing seemed to be working properly - a description so negative that it might have been supplied by those movements themselves. Thus, according to the report, the situation had been so bad as to necessitate a coup d'état, the abrogation of most human rights and constitutional guarantees and the suspension of the country's institutions.

40. Presenting the situation in such a manner could hardly contribute to an understanding of the problems of Peru, a country at grips not only with terrorism but with what might be described as totally irrational "movements of rage", equipped with powerful weapons and led by clinically insane individuals. An effort had to be made to understand why the whole situation had arisen and how it might be brought to an end, but the report was hardly helpful in that respect and did not show a determination on the part of the public authorities to dispose of existing problems. Yet the lesson of history was surely that trying to save democracy by undemocratic means never led to any good.

41. Had it been possible to engage in a serious debate on terrorism, the Committee could have heard about the experience of other countries which had encountered similar problems and had resolved them by democratic means. That did not seem to be the intention of the Peruvian Government, judging by all the measures it had taken after the coup d'état and, in particular, by its numerous executive decrees. The decrees were inconsistent with article 14 of the Covenant, and it was doubtful whether the holding of elections in November 1992 would guarantee the observance of article 25, since the elections were likely to result in a parliament and public bodies similar to those the President of the Republic of Peru judged inefficient.

42. The Peruvian Government's protests about human rights bodies which insisted on respect for human rights for all human beings were also surprising. Whenever the Committee had heard a Government argue in such a way in the past, it had consistently replied that acts of terrorism were, without any doubt, serious enough to justify stern repression and heavy penalties, but that the individuals thus punished must nevertheless enjoy the guarantees provided in the Covenant. Incarcerated terrorists had rights, in Peru as elsewhere. At the same time, the film shown to the Committee demonstrated that the absence of control in Peruvian prisons enabled detainees to behave in a manner unimaginable in a penitentiary establishment placed in the normal manner under the authority of the executive.

43. In addition to associating himself with all the concerns expressed by other members of the Committee, he only wished to say that he regretted the failure of the additional reports to provide the Committee with an opportunity to fulfil its role, that of helping the State party to seek solutions to an extremely difficult situation. That failure was particularly unfortunate as the Committee was fully aware of the gravity of the situation and sympathized with the numerous victims of terrorism, but also with those of the irresponsible, haphazard reaction to terrorism to which led to still more disappearances and extrajudicial executions. The wrong-headed thinking which the Peruvian Government seemed to have adopted at present, according to which dictatorial rule could legitimately be imposed in a country if it enjoyed the temporary support of the majority of citizens and was aimed at establishing democracy, had always yielded disastrous results in the past. The Peruvian Government should know that the Committee expected it to show the necessary sense of responsibility and democratic spirit so that the tragedy of the Peruvian people might at last come to an end.

44. The CHAIRMAN acknowledged the efforts made by the Peruvian delegation to answer the questions addressed to it, a task made particularly difficult by the fact that the basis for dialogue - the reports - was so poor. The Committee was often obliged to deplore the fact that periodic reports contained little information about the actual situation but referred mostly to juridical and legislative matters. Not even that could be said in the case in point; despite the extended time-limit granted to the Peruvian Government for the submission of written replies, it had to be recognized that a number of questions concerning the legal and juridical situation remained unanswered. The Peruvian delegation had supplied some very important additional information, which, however, had not sufficed to give the Committee a clear idea of the legal situation in the country, and he could not but associate himself with the concerns and disappointment voiced by Committee members.

45. The Committee was fully aware that a situation as difficult as that currently being experienced in Peru necessitated the adoption of special measures, which could entail certain derogations from the application of the rights enshrined in the Covenant. It accepted that state of affairs, but on condition that the derogations remained within the limits set by article 4 of the Covenant, which did not seem to be the case in Peru. To affirm that article 4, paragraph 2 was fully complied with was not enough. Article 4 provided that States parties could take measures derogating from their obligations under the Covenant "to the extent strictly required by the exigencies of the situation" and "provided that such measures are not

inconsistent with their other obligations under international law", and any State party availing itself of the right of derogation was required immediately to notify the Secretary-General. To the Committee's knowledge, that condition had not been met either. Such an omission, together with the failure of the Peruvian Government to react to the Committee's views following the consideration of communications addressed to it under the Optional Protocol, gave rise to doubts as to the Peruvian authorities' will to cooperate.

46. The Committee had taken note of the numerous undertakings to respect human rights given by the President of Peru, and it hoped that the elections scheduled for November 1992 would indeed mark the beginning of a new era in which human rights would be respected; in that case, the Peruvian Government would have other obligations in the area of human rights, including the obligation to provide compensation to the victims.

47. The Committee hoped that the third periodic report would prove more satisfactory as to both form and substance, and it wished to assure the Peruvian Government through its delegation that the often critical comments made had been wholly motivated by the wish to help the Government to improve the situation.

48. He recalled that the third periodic report of Peru would fall due relatively soon on 9 April 1993, owing to the considerable delay in the submission of the second report. It was to be hoped that the time-limit would be met.

49. Ms. LINARES ARENAZA (Peru) thanked the members of the Committee for their important observations and suggestions. She would not fail to convey them immediately to the competent authorities so that they might take the necessary steps to improve not only the quality of the next periodic report but also, and especially, the implementation of the Covenant.

50. It was obviously not easy to convey an understanding of the difficulties in implementing the Covenant which arose for her Government from the situation of extreme violence in Peru, but it would be erroneous to believe that all the provisions of the Covenant had been suspended.

51. On behalf of the Peruvian Government, her delegation thanked the Committee for the assistance it had offered to provide, and requested its help in the preparation of the next periodic report. She hoped that members of the Committee saw her presence before them as proof of the firm intention of the Peruvian Government, despite all its current difficulties, to cooperate with the Committee.

52. The CHAIRMAN announced that the Committee had completed its consideration of the second periodic report of Peru.

53. The Peruvian delegation withdrew.

The public meeting rose at 12.25 p.m.